

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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**IN RE:**

**CHRIS PETTIT & ASSOCIATES, P.C.**

**CHRISTOPHER JOHN PETTIT**

**Jointly Administered Debtors.<sup>1</sup>**

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**CASE NO. 22-50591-CAG**

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**CHAPTER 11 PROCEEDINGS  
(Jointly Administered Under  
Case No. 22-50591-CAG)**

**FIFTH NOTICE AND STIPULATION REGARDING CHALLENGE OF ERIC TERRY,  
CHAPTER 11 TRUSTEE, TO CLAIMS OF COUNSEL FINANCIAL PURSUANT TO  
ORDER REGARDING MOTION TO REQUIRE TRUSTEE TO SEGREGATE  
COUNSEL FINANCIAL'S CASH COLLATERAL AND FOR  
ADEQUATE PROTECTION [DOCKET NO. 834]**

Eric Terry, solely in his capacity as chapter 11 trustee (the "Trustee") for the bankruptcy estates (the "Estates") of Chris Pettit & Associates, P.C. ("CP&A") and Christopher John Pettit ("Pettit," and together with CP&A, the "Debtors"), Counsel Financial II, LLC ("CFII"), and Counsel Financial Holdings, LLC (together with CFII, "Counsel Financial") file this *Fifth Notice and Stipulation Regarding Challenge of Eric Terry, Chapter 11 Trustee, to Claims of Counsel Financial Pursuant to Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection* (the "Notice and Stipulation") and represent as follows:

**BACKGROUND**

1. On June 1, 2022 (the "Petition Date"), the Debtors commenced their Chapter 11 cases by filing voluntary petitions under chapter 11 of the Bankruptcy Code. On June 13, 2022,

the Court entered its Orders [Docket No. 36 in the Pettit case and Docket No. 39 in the CP&A case] directing the appointment of a chapter 11 trustee in the Debtors' cases and providing that the United States Trustee appoint such chapter 11 trustee. On June 16, 2022, the United States Trustee filed its Notice of Appointment of Chapter 11 Trustee [Docket No. 49 in the CP&A case], providing for the appointment of Mr. Terry as Trustee. On June 22, 2022, the Court entered its *Order Approving United States Trustee's Application for Order Approving Appointment of Eric Terry as Chapter 11 Trustee* [Docket No. 83 in the CP&A case], approving the United States Trustee's selection and appointment of Mr. Terry as Trustee. A Committee has been appointed and no motions to convert the cases have been filed.

2. On February 8, 2023, the Court ordered that:

the Trustee, any creditor or other party in interest may challenge the validity, amount, perfection, priority, extent, or enforceability of the purported secured claim or the prepetition security interests of Counsel Financial (a "Challenge"), so long as any Challenge is made on or before March 24, 2023 (the "Challenge Period"), after which Challenge Period all Challenges shall be deemed finally and conclusively barred.

*Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection pursuant to 11 U.S.C. § 363(e)* [Docket No. 834] [the "Cash Collateral Order"], at p. 2.

3. On March 24, 2023, the Trustee and Counsel Financial filed their *Notice and Stipulation Regarding Challenge of Eric Terry, Chapter 11 Trustee, to Claims of Counsel Financial Pursuant to Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection* [Docket No. 887] (the "First Notice and Stipulation"). In this First Notice and Stipulation, the Trustee and Counsel Financial noted that the Trustee had identified issues of concern regarding the validity, amount, perfection,

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's Social Security Number or Federal Tax Identification Number, as applicable, are: Chris Pettit & Associates, P.C. (1267), and Christopher John Pettit (9429).

priority, extent, or enforceability of the purported secured claims and prepetition security interests of Counsel Financial. *First Notice and Stipulation*, at p. 6. *Id.*

4. On April 6, 2023, the Trustee and Counsel Financial filed their Second Notice and Stipulation Regarding Challenge of Eric Terry, Chapter 11 Trustee, to Claims of Counsel Financial Pursuant to Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection [Docket No. 906] (the "Second Notice and Stipulation").

5. On May 5, 2023, the Trustee and Counsel Financial filed their Third Notice and Stipulation Regarding Challenge of Eric Terry, Chapter 11 Trustee, to Claims of Counsel Financial Pursuant to Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection [Docket No. 939] (the "Third Notice and Stipulation").

6. On June 7, 2023, the Trustee and Counsel Financial filed their Fourth Notice and Stipulation Regarding Challenge of Eric Terry, Chapter 11 Trustee, to Claims of Counsel Financial Pursuant to Order Regarding Motion to Require Trustee to Segregate Counsel Financial's Cash Collateral and for Adequate Protection [Docket No. 965] (the "Fourth Notice and Stipulation"). In this Fourth Notice and Stipulation, the Trustee and Counsel Financial stipulated that:

The Trustee and Counsel Financial will endeavor to resolve the issues in dispute and, if successful, will file a further notice and stipulation setting forth their agreement on or before June 30, 2023 (which date may be extended by written agreement of the parties), subject to the right of any party in interest to object within 14 days thereafter pursuant to the Cash Collateral Order.

7. The Trustee and Counsel Financial have since conferred and made progress on resolving the disputes between them. However, it has become apparent that they will need more time to fully resolve the issues.

#### **FIFTH NOTICE AND STIPULATION**

8. The Trustee and Counsel Financial agree and stipulate that this Fifth Notice and Stipulation constitutes a continuing “Challenge” under the Cash Collateral Order. The Trustee and Counsel Financial will endeavor to resolve the issues in dispute and, if successful, will file a further notice and stipulation setting forth their agreement on or before **July 31, 2023** (which date may be extended by written agreement of the parties), subject to the right of any party an interest to object within 14 days thereafter pursuant to the Cash Collateral Order. In addition to attempting to resolve Counsel Financial’s asserted secured claims, the parties will attempt to reach a global resolution of all issues between them, including any potential avoidance actions against Counsel Financial, as well as the rights of third parties that may be implicated. The parties reserve all rights with respect to any of the issues that may be in dispute between them.

9. If the parties are unable to reach an agreement by July 31, 2023, the Trustee will file, on or before that date, a supplemental Challenge in the form of an adversary proceeding under Rule 7001(1), (2) specifically addressing the issues that remain in dispute.

10. **Pursuant to the Cash Collateral Order, this Fifth Notice and Stipulation will become binding on all parties in interest in the Debtors’ jointly administered cases unless a party in interest in the jointly administered cases files an objection to this Notice and Stipulation within fourteen (14) days hereof. *Cash Collateral Order*, at pp. 2-3.**

Dated: June 30, 2023

Respectfully submitted,

/s/ Jason M. Rudd

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**ATTORNEY FOR COUNSEL FINANCIAL**

**CERTIFICATE OF SERVICE**

I certify that, on June 30, 2023, a copy of the foregoing Fifth Notice and Stipulation was served electronically on all parties registered to receive notice through the Court's ECF service, which parties are listed on the attached ECF Service List, and on the following members of the Creditors' Committee by pdf email to the email addresses listed below and by first class mail on Christopher John Pettit:

Frank and Emma Persyn Family Limited Partnership  
Contact: Loretta Persyn  
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San Antonio, TX 78254  
Email: lorettapersyn@yahoo.com

Bruce Bengel  
5502 Pioneer Creek  
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Richard Mynar  
796 S. Highway 16  
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and was also served by U.S. Mail, postage prepaid, on:

Christopher John Pettit  
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/s/ Jason M. Rudd  
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